IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3203 OF 2005

IN

SUIT NO.1605 OF 2001

Dr.Manjuladevi Mistry & others. ...Plaintiffs.

vs.

Smt.Subhadra S.Mistry &others. ...Defendants.

And

Hindustan Lever Ltd. & another. ...Respondents.

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Mr.B.B.Saraf with Mr.Khokawala i/b. Nankani & Associates, for Plaintiffs.

Mr.Tushar Bhavsar i/b. Avinash Joshi, for Defendant no.1B.

Ms.J.M.Sidhwa i/b. Manoj Bhatt, for Defendant no.2

**CORAM: D.K.DESHMUKH,J.**

**DATED: 8th June,2007.**

**P.C**.:-

1. This notice of motion has been taken out by the plaintiffs. The reason why this notice of motion has been taken out is described in the ad-interim order dated 28.10.2005. One of the properties belonging to the deceased viz. Flat at Napeansea Raod i.e. flat no.C-16, was in possession of the licensee. As per the ad-interim order dated 28.10.2005 the Receiver has refunded the deposit given by the licensee and has taken the vacant possession of the flat. Admittedly, the flat presently is in possession of the receiver and the receiver is in process of appointing agent for being in possession of the flat.

2. At this stage, an application is made on behalf of defendant nos.1(a), 1(b) and 2 that they are presently occupying the flat at Jambhulwadi which is also owned by the trust. They submit that they are also the beneficiaries of the trust as are the

plaintiffs. According to the defendants, the defendant no.1(a) is very old and her age is more than 80 years and she is finding it difficult to live at Jambhulwadi flat. The defendant no.2 is the sister of defendant no.1(a). She is sister of original defendant no.1 and she is presently residing alongwith defendant 1(a) and 1(b) at Jambhulwadi flat. It is submitted on their behalf that if defendant nos.1(a),1(b) and 2 are permitted to shift to the flat no.C-16, on the 3rd floor of the building known as Malabar Apartments, Napeansea Road, Mumbai-6, it will be convenient to them, and they are willing to vacate the Jambhulwadi flat belonging to the trust which is presently occupied by them. The flat at Jambhulwadi is also under the Receiver. They submit that instead of Napeansea Road flat, Jambhulwadi flat can be given on agency basis by the receiver. The request made on behalf of defendant nos.1(a), 1(b) and 2 is opposed by the plaintiffs. According to the plaintiffs, the flat at Napeansea Road is more valuable property and it will also fetch greater licence fee/royalty from the agent than the Jambhulwadi Flat. In my opinion, the objection

raised on behalf of the plaintiffs to the request made on behalf of defendant nos.1(a), 1(b) and 2 is not justified, firstly because the plaintiff and the defendant nos.1(a), 1(b) and 2 are in same position because all of them are beneficiaries of the trust. Admittedly, the plaintiff are also occupying the property belonging to the trust. The defendant nos.1 (a), 1(b) and 2 are not asking for any additional accommodation, they are only asking for substitute accommodation for their convenience considering their age. In my opinion, considering the nature of the property, relationship between the parties and the nature of reliefs that are claimed in the motion as also in the suit, the following order will meet the ends of justice:-

(1) Within a period of two weeks from today, the defendant nos.1(a), 1(b) and 2 shall file an affidavit giving exact dimension of the flat at Jambhulwadi. They will also file an undertaking undertaking therein to hand over vacant possession of the Jambhulwadi flat within four weeks of receiving intimation from the Receiver that the possession of

Napeansea road flat can be handed over to them. In other words they will undertake to hand over the possession of the Jambhulwadi flat to the Receiver immediately after occupying the Napeansea road flat.

(2) The flat at Napeansea road shall be occupied by the defendant nos. 1(a), 1(b) and 2 as agents of the Receiver on usual terms and conditions except royalty and security. The defendant nos. 1(a), 1(b) and defendant no.2 shall deposit in this Court the expenditure that might have been incurred by the Receiver for issuing advertisement for appointment of agent in relation to Napeansea road flat. The deposit shall be made within one week from the date on which the intimation is received from the Receiver by the defendant nos.1(a), 1(b) and 2. In case the amount has been paid by the plaintiff, the Receiver shall refund the amount to the plaintiff. The Receiver then shall take immediate steps to appoint an agent to be in possession of Jambhulwadi Flat on usual terms and conditions including royalty and security. The notice of motion is disposed of.

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